

September 12, 2013

Mary R. Casey
General Counsel
Marin Municipal Water District
220 Nellen Avenue
Corte Madera CA 94925-1169

Re: Your Request for Advice
Our File No. A-13-126

Dear Ms. Casey:

This letter responds to your request on behalf of Marin Municipal Water District Board Member Liza Crosse for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”)¹ and is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws, such as Government Code Section 1090 and common law conflict of interest.

QUESTION

In her capacity as a District Board Member of the Marin Municipal Water District (the “District”), may Director Crosse take part in decisions regarding contracts involving the County of Marin (the “County”) even though she is also employed by the County?

CONCLUSION

Yes. Salary from a local governmental agency does not constitute “income” under Section 82030(b)(2). Therefore, the County is not a source of income to Director Crosse, and she may take part in District decisions regarding contracts involving the County barring a

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

reasonably foreseeable material financial effect on any other potential economic interest she may have.

FACTS

Liza Crosse is a member of the Marin Municipal Water District Board of Directors. She is also employed as an Aide to a county supervisor and receives a salary from the County of Marin. As a county employee, her duties consist of regularly participating in meetings, grant writing, planning of events, and facilitating the flow of information to District constituents and others. While she provides general assistance to the County Supervisor in a wide variety of areas, you state that she does not directly participate in the development of County contracts. At times, the County and the District partake in joint projects that involve the approval of contracts with the County by the District directors.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests as set forth in Section 87103. (Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest in a given governmental decision.

As a district director, Director Crosse is subject to the Act’s conflict-of-interest provisions. However, your question involves only step three of the analysis, determining whether Director Crosse has interests that may be implicated by the governmental decisions in which she participates. Interests from which a conflict of interest may arise are defined in Section 87103 and Regulations 18703-18703.5 and include:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d); Regulation 18703.1(b).)
- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- An interest in a source of income to the official, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An interest in a source of gifts to the official if the gifts aggregate to \$440 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)

- An interest in the official's personal finances, including those of the official's immediate family. This is known as the "personal financial effects" rule. (Section 87103; Regulation 18703.5.)

The only interest implicated in the facts you have provided is Director Crosse's potential economic interest in the County as a source of income. However, Section 82030(b)(2) provides that "income" does not include salary received from a state, local, or federal government agency. Therefore, Director Crosse's salary from the County is not an interest from which a conflict of interest may arise. Barring any other interest Director Crosse may have, Director Cross is not disqualified from taking part in District decisions regarding contracts involving the County.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Heidi G. Kim
Legal Intern, Legal Division

HGK:jgl